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PROTECTED MATERIAL: MONSANTO
INSURANCE COVERAGE LITIGATION
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IN THE CIRCUIT COURT OF ILLINOIS
TWENTIETH JUDICIAL CIRCUIT OF ILLINOIS
ST. CLAIR COUNTY

FILED

JUN 16 1986

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CIRCUIT CLERK

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,

vs.

PAUL SAUGET, individually, and
SAUGET & COMPANY, a Delaware
corporation,

Defendants.

CAUSE NO. 81-CH-19

REPORT OF PROCEEDINGS

Before the HONORABLE JONATHAN ISBELL, Judge

(JULY 24, 1985)

MONSANTO INSURANCE COMPANY LITIGATION:

MAY 25, 1990 ORDER PROTECTED MATERIAL
TREAT AS PROTECTED UNDER ATTORNEY-CLIENT
PRIVILEGE AND WORK-PRODUCT DOCTRINE.

APPEARANCES:

MR. MARK A. LAROSE, Assistant Attorney General,
On Behalf of the People of the State of Illinois;
and

MR. BRUCE CARLSON, Staff Attorney,
On Behalf of the Illinois Environmental
Protection Agency; and

MR. HAROLD G. BAKER, JR., Attorney at Law,
On Behalf of Paul Sauget, individually, and
Sauget & Company, a Delaware corporation.

LINDA S. HOYLMAN, C.S.R.
Official Court Reporter

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I N D E X

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(Page) (Page) (Page)

JOINT EXHIBITS:

No. 1 12 93 ...

PLAINTIFF'S EXHIBITS:

No. 2 22 91 ...

No. 3 60 91 ...

No. 3A 64 92 ...

No. 4 67 91 ...

No. 5 72 113 ...

No. 6 82 113 ...

No. 7 89 114 ...

No. 8 124 128

No. 9 124 130* ...

No. 10 124 126 ...

No. 11 94 114 ...

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MR. BAKER: You did swear him in, didn't you (to the Clerk)?

CLERK: Uh huh.

Q (Mr. Baker) Your name is Paul Sauget?

A Yes.

Q And you live in the Village of Sauget?

A Yes.

Q St. Clair County, Illinois?

A Yes.

Q You used to operate a landfill in St. Clair County?

A Yes.

Q Down along the river?

A Yes.

Q I show you what the-- what I think we marked as Exhibit A on March the 20th, 1984, and I ask you if the area within the black lines truly depicts what may have been or was your landfill?

A Yeah, that's the vicinity, the area, or whatever.

Q Okay, this is obviously the Mississippi River up to the top of it?

A Yes.

Q Okay.

Mr. Sauget, in March of 1984, did you enter into an

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1 Q (Mr. Baker) Now, before I give this to you-- I'm
2 not trying to play a dirty trick on you.

3 Mr. Sauget, you are personally aware, are you not,
4 of the vicinity in which this landfill appears?

5 A I am.

6 Q And you've lived within what, four miles of that
7 area all of your life?

8 A Approximately, yes.

9 Q What lies-- Well, strike that.
10 Which way is north, Paul?

11 A Towards you.

12 Q Towards me?

13 A Right.

14 Q All right. So, north is where it says "fly-ash
15 pond"? That would be north compared to the rest of it, is
16 that right?

17 A That's right.

18 Q Okay. What is this white strip? What does it
19 represent that runs all the way north and south across the
20 picture?

21 A That's the seawall.

22 Q Or the levee?

23 A The levee and the seawall, the concrete wall on
24 the levee.

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1 Q As a matter of fact, that's a road of-- gravel
2 road that's on top of that seawall?

3 A It's on the east side of the levee, of the
4 seawall, of the white line.

5 Q What is this structure down here at the southwest
6 end of the picture?

7 A That's Cargill's, I guess,--

8 Q It's the old elevator?

9 A Wait a minute,--

10 Q It's the old elevator, is it not?

11 A Yeah, I think it is.

12 Q And that's the--

13 A Is that the railroad? Yeah, that's Cargill's.
14 It's St. Louis Grain or something now.

15 Q That's abandoned, isn't it?

16 A Yes.

17 Q And this area down about the east center of the
18 picture--

19 A That's Phillips.

20 Q Phillips Pipeline?

21 A Pipeline Company.

22 Q It's a tank farm?

23 A Right.

24 Q All right.

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1 Route 3, Illinois Route 3, is not shown on the
2 picture, but it's--

3 A Lower.

4 Q --down further to the east-- Down further to the
5 east, that doesn't sound right. But on the picture, it
6 would be down further to the east?

7 A That's right.

8 Q And it runs generally parallel with the levee?

9 A With the levee. In that location, yeah.

10 Q Mr. Sauget, are there any homes between the levee
11 and Route 3, either here by the Phillips' tank farm or over
12 here further north?

13 A No. No.

14 Q Are there any homes on the riverside of the
15 levee, south of the old landfill?

16 A How far south are you talking? If you go down
17 past--

18 Q Well, to the next section road, for example?

19 A No, no, nothing until you get past the canal.

20 Q And how far would that be?

21 A A couple of miles.

22 Q And are there any homes up to the north of the
23 old landfill on the riverside of the levee?

24 A No.

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PROTECTED MATERIAL: MONSANTO
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1 Q Okay.

2 Somebody now uses and occupies a substantial portion
3 of this, do they not?

4 A They do.

5 Q And do you know of your own personal knowledge
6 who it is?

7 A Yes, I do.

MONSANTO INSURANCE COMPANY LITIGATION:

8 Q Who?

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9 A Pillsbury Company.

10 Q And my understanding is that they've leased the
11 area north of the old-- north of the Alton-Southern from
12 the owners of that ground?

13 A Not quite. They lease south of their present
14 location. They lease south to another property line in
15 there.

16 Q Can you show us on the map where Pillsbury is?
17 And maybe I ought not try to lead you.

18 A That-- I thought that was right there, I guess.

19 (At this time, the witness got up from the
20 witness stand and approached map.)

21 A Looks like the State could come up with a better
22 map than that.

23 THE COURT: Sir,-- Mr. Saugat, I have to remind
24 you, the Court Reporter is taking down everything you say.

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~~ATTORNEY WORK PRODUCT~~
ATTORNEY CLIENT PRIVILEGE

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1 And even though, sometimes--

2 THE WITNESS: I can't see it from--

3 THE COURT: Wait, hold on. Even though sometimes
4 you're kind of really not talking for the record, you have
5 to realize it's all on the record. So, try to keep your
6 voice up, and don't mumble or talk under your breath.

7 THE WITNESS: I'm sorry

8 THE COURT: That's okay.

9 A That's-- That's Pillsbury. But this is a pretty
10 old map, isn't it? This is an old map.

MONSANTO INSURANCE COMPANY LITIGATION:

11 Q Well, can--

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12 A This is Pillsbury, and this is something else.

13 Q Where you're pointing to, is where the--

14 THE COURT: Where it says "fly-ash pond."

15 Q (Mr. Baker) West and opposite about the third--
16 What do you call those? Peers out into the river?

17 A They have an unloading conveyor here, and they
18 got a grain loading conveyor here. That's not shown on
19 there.

20 Q How far south does Pillsbury use?

21 A Well, I don't know, they-- Pretty hard to tell
22 from this map. But they go, I would say, five hundred
23 feet.

24 Q Hasn't-- Pillsbury, in fact, has built a

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1 railroad spur that comes off the Alton & Southern--

2 A Right.

3 Q --and in like this, is that not right?

4 A Two tracks.

5 MR. LaROSE: Excuse me, Your Honor. Excuse me,
6 Your Honor, I would ask that the witness be allowed to
7 testify and that counsel not lead the witness.

8 THE COURT: Leading, sustained.

9 MR. BAKER: All right.

10 Q (Mr. Baker) Has Pillsbury built a railroad?

11 A They built two tracks in from this Alton-Southern
12 line there into their terminal so-- where they load grain
13 onto the river. They have two tracks in there.

14 In fact, one of the--

15 MR. LaROSE: Excuse me, Your Honor, there is no
16 pending question.

17 THE COURT: Sustained.

18 Wait for a question.

19 THE WITNESS: Can I finish my answer?

20 THE COURT: The question was has Pillsbury built
21 railroad tracks. And if you haven't-- If you finished
22 your answer to that question, then wait till the next
23 question. If you haven't finished your answer, then you
24 may proceed. But make sure it's to the question he asked.

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1 A We're talking about railroad tracks?

2 Q Yes.

3 A I was trying to identify where they built them.

4 In fact, they got another railroad tracks that comes around
5 and goes over there.

6 THE COURT: Thanks.

7 A Storage track.

8 Q Now, let me go back to March of '84, Mr. Sauget,
9 and I hand you what has been marked for identification as
10 Joint Exhibit 1 and ask if you've seen that document
11 before.

12 (At this time, Joint Exhibit
13 MONSANTO INSURANCE COMPANY LITIGATION: No. 1, having been so marked
14 MAY 25, 1990 ORDER PROTECTED MATERIAL
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PRIVILEGE AND WORK-PRODUCT DOCTRINE for identification, was
15 introduced into evidence.)

16 A Yeah, I guess I have.

17 Q Did you sign that document?

18 A Yeah, I guess I have.

19 Q In that document you agreed to do certain things
20 in respect to your own landfill, did you not?

21 A I did.

22 Q Did you do them?

23 A No. Partially, but not of any consequences.

24 Q What have you done since that stipulation was

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1 Q 1984?

2 A No.

3 Q Have you made any-- You say you haven't done
4 anything since the spring of 1985 to put any more cover on?

5 A Not to put any on. I went down there to level
6 out what I had. That's when I got hung up in the mud, so I
7 quit.

8 I don't guess I can say anything, Judge, without--

9 THE COURT: I would appreciate your waiting for a
10 question. Right.

11 THE WITNESS: Then after that, do I get my
12 chance?

13 THE COURT: This is your chance, but your
14 attorney will take care of you, don't worry. Be patient.
15 You can whisper in his ear.

16 Q (Mr. Baker) Mr. Sauget, have you allowed dumping
17 on any part of the site since the flood in 1973?

18 A No, sir.

19 Q Are you allowing dumping on the site now?

20 A No.

21 Q There is,-- I think we have to admit there is
22 some dumping, is there not?

23 A There are.

24 Q And is that being done under your auspices?

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1 A (no response)

2 Q Are you doing it?

3 A No.

4 Q Are you allowing it to be done?

5 A No.

6 Q Do you have any interest in the real estate?

7 A No.

8 Q Do you know who owns the part south of the Alton-

9 Southern Parcel C or Track C?

10 A Yeah, I think I do. I think the same owners
11 still have it.

MONSANTO INSURANCE COMPANY LITIGATION:

12 Q Who is that?

MAY 25, 1980 ORDER PROTECTED MATERIAL
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13 A Cahokia Trust Properties.

14 Q Have they, to your knowledge, done anything--

15 A Wait a minute.

16 Q Pardon?

17 A Let me think. I think they still own it.

18 THE COURT: What is Track C?

19 MR. BAKER: That's the part south of the
20 railroad there (indicating on map).

21 Q (Mr. Baker) And who owns the-- up north of the
22 railroad, "B" and "A" and further up, if you know?

23 A The first parcel north of the railroad is owned
24 by Monsanto. And there is another parcel owned by Phillips

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1 66. And then another parcel was owned by Portland Cement.
2 And I think a guy by the name of Spirtas-- He's a wrecking
3 contractor in St. Louis. --I heard or he told me that he
4 had purchased that from Portland, which I don't know for
5 sure. And then Eagle Marine owns from there north.

6 Q And Eagle Marine owns what is leased by
7 Pillsbury?

8 A What is leased by Pillsbury.

9 Q To your knowledge, are any of the owners allowing
10 people to dump down there?

11 A Not that I know of. I mean, Spirtas, he dumped
12 down there.

13 Q But Spirtas doesn't own anything that was in the
14 landfill, does he? Or does he?

15 A He did, yes.

16 MR. BAKER: I'm going to lead him, if I may,
17 because I think it will speed it up.

18 Q (Mr. Baker) When you're talking about Monsanto,
19 Pillsbury, and Phillips, there are three pie-shape
20 pieces, --

21 A Right.

22 Q --aren't there, that come from here to the cover?

23 A That's right.

24 Q Monsanto, Phillips with the peer, and then you

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1 say Spirtas-- I know it to be Patgood. --is here?

2 A Yeah, that's the Alton-Southern.

3 Q Here is the A.M.S.

4 A Okay. Monsanto owns the first strip.

5 Q Like that (indicating)?

6 A That (indicating).

7 Q And then Phillips?

8 A That's Phillips right there. And then Portland
9 Cement, which is now Spirtas.

10 Q Okay.

11 A And then Eagle Marine.

12 Q All right.

13 Do you have any estimation, Mr. Saugst,-- You say--
14 You've told us what it would cost. Do you have any
15 estimation of the time it would take you if you started
16 today and worked diligently with one dump truck and one
17 tractor, how long it would take you to completely fill the
18 areas that you agreed to fill, cover the areas you agreed
19 to fill?

20 A With one dump truck, ten years.

21 Q So, we could work down from there by the number
22 of trucks?

23 A Well, it's just a guess, but--

24 MR. BAKER: I have no other questions.

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1 fly-ash. That has been approved by the EPA. But I get
2 halfway in the ballgame, then they say no, you can't use
3 cinders anymore. And that's what got me in trouble.

4 Q As a matter of fact,-- As a matter of fact, the
5 area marked-- Boy, I hate these upside down maps. --"A"
6 is covered with cinders and fly-ash, is it not?

7 A Well, approximately. I mean, I can't really tell
8 from the map.

9 Q As a matter of fact, is part of "B" covered with
10 cinders and fly-ash?

11 A Yes.

MONSANTO INSURANCE COMPANY LITIGATION:
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12 Q And the cinders and fly-ash came from where, Mr.
13 Saugst?

14 A Came from Monsanto in the St. Louis plant and in
15 the Krummrich plant.

16 Q And that's still available?

17 A That's still available.

18 And also at that time, I had available to me a fly-
19 ash-- not a fly-ash. It's a slag mound north of Monsanto
20 Avenue that was available to me then that made excellent
21 cover. It got as hard as this top. But they wouldn't let
22 me use it.

23 Q As a matter of fact, the part that's covered here
24 in "A" with fly-ash is stage vegetation?

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1 A Un, yeah. Well, part of that, Pillsbury has
2 coal on it, stacked and piled on it; and one time, they had
3 a pile of corn on it; and they stockpiled things out there
4 on that area.

5 Q And it's hard?

6 A Pardon?

7 Q It's hard?

8 A It's hard, yes.

9 Q All right.

MONSANTO INSURANCE COMPANY LITIGATION:

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10 THE COURT: Wait.

11 MR. LaROSE: Are you done?

12 MR. BAKER: Yeah.

13

14

(FURTHER) EXAMINATION

15 BY MR. LaROSE:

16 Q Mr. Sauget, you know anything about permeability?

17 A Well, a little, a little something.

18 Q Do you know what permeability means?

19 A Stable, tightness, stable built, lack of
20 penetration.

21 Q Would you know if permeability means the ability
22 of water to travel through a given substance in a given
23 amount of time?

24 A I know water travels.

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1 Patrick McCarthy.

2 THE COURT: Mr. McCarthy, step forward, please.

3 Come up here. I'll swear you in.

4 Raise your right hand.

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5
6 PATRICK M. MCCARTHY

7 being called as a witness by Mr. LaRose, having been first
8 duly sworn by the Court, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. LaROSE:

11 Q Mr. McCarthy, could you state your name for the
12 record, please?

13 A Patrick Michael McCarthy.

14 Q And your present occupation, Mr. McCarthy?

15 A Environmental Specialist with the Illinois EPA,
16 Division of Land and Pollution Control in the Collinsville
17 Regional Office.

18 Q How long have you held that title, Mr. McCarthy?

19 A Since 1972, January.

20 Q Okay. Have you had any special training as
21 Environmental Protection Specialist?

22 A Yes. I have had numerous seminars and training
23 from the U.S. EPA, private training with consultants,
24 safety training, sampling techniques, investigation

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1 A Well, basically, as I stated earlier, determining
2 the area in question that was the fill area and walking in
3 a certain direction in every fifty, seventy-five yards, a
4 hundred yards, stopping, digging, and just recording what
5 was found.

6 Q Digging how far?

7 A Until I encountered refuse.

8 Q Okay. Do the pictures that appear on page 2
9 through 5 of what has been marked as Plaintiff's Group
10 Exhibit 3 fairly and accurately represent the areas in
11 which you took depth probings in Decembr of 1979?

12 A This is correct.

13 Q Okay. Mr. McCarthy, I'm going to hand you what
14 I've marked as Plaintiff's Group Exhibit 3A and ask if you
15 can identify that, please.

16 (At this time, Plaintiff's
17 Group Exhibit 3A, having
18 been so marked for identi-
19 fication, was introduced
20 into evidence.)

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21 A Yes, this is the site sketch I prepared at the
22 time of the December '79 inspections. One-- Page 1 shows
23 what we referred to as Area "A" and "B," and page 2 is Area
24 "C."

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1 Q Okay, now, at the time that you took this in '79,
2 there were no designated areas, "A," "B," and "C"?

3 A That's correct, we considered "A" and "B" to be
4 the northern site, "C" to be the southern site.

5 Q Okay, what does page 1 depict, not which area,
6 but what specifically does it depict?

7 A Okay. it shows approximate locations and the
8 distance between those locations of the probings that I
9 took on the date and also on the legend shows the depth of
10 cover before encountering refuse.

11 Q Okay. how many depth probings did you take on
12 December the 6th of 1979 of what would be the-- Correct me
13 if I'm wrong. --the northern portion of the site?

14 A Seven.

15 Q Okay. And what were the results of those
16 probings?

17 A That no area was found that contained two foot of
18 final cover.

19 Q Okay, directing your attention to page 2 of
20 Plaintiff's Group Exhibit 3A. what specifically is depicted
21 on page 2?

22 A Again, the approximate location of the areas that
23 I did depth probings to determine the depth of final cover
24 and also the distances between those probing areas and also

HED 0000445

1 McCarthy, if you can identify that?

2 (At this time, Plaintiff's
3 Group Exhibit No. 4, having
4 been so marked for identifi-
5 cation, was introduced into
6 evidence.)

7 A Yes, this is a report that I prepared after the
8 July 25th and 27th inspections at the subject facility.

9 Q Okay, and how many pages are there to that
10 exhibit?

11 A Eight.

12 Q Okay. And it includes what material?

13 A Okay, page 1 is a cover memo, summary memo of the
14 inspection. Pages 2 and 3 reflect what was determined--
15 the locations of the probings on the northern site, and 4
16 and 5-- pages 4 and 5 show the location business and the
17 depth of cover on the southern portion-- southern side.
18 And pages 6, 7 and 8 are photographs showing again
19 techniques used at that time. a soade in this case,
20 determining-- digging down until encountering refuse.

21 Q Directing your attention to page 2 of that
22 document, what does page 2 specifically identify?

23 A The approximate locations of the depth probings
24 taken on July 29th, 1982.

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1 water. It would not-- It would not meet the requirements
2 of final cover if two foot of suitable final cover were
3 there. Therefore, I did not probe it.

4 Q Okay. Did you take a photograph of that area that
5 was recently spread?

6 A Yes.

7 Q Okay. I'm going to hand you what has been
8 previously marked as Plaintiff's Group Exhibit No. 6, a
9 copy of which I'm handing Counsel, and ask you if you can
10 identify that document?

11 (At this time, Plaintiff's
12 Group Exhibit No. 6, having
13 been so marked for identifi-
14 cation, was introduced into
15 evidence.)

16 A Okay, this is a document which is a-- page 1 is
17 a cover memo which briefly discusses May 10th and May 20th,
18 those short visits and then also the June 10th, 1985
19 inspection that I conducted.

20 Q So that the report then of your-- the entire
21 report and photographs of your June 10th, 1985 inspection?

22 A Yes, along with some information on May 10th and
23 20th.

24 Q Does that packet of information contain the

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INSURANCE COVERAGE LITIGATION

1 (At this time, Plaintiff's
2 Exhibit No. 7, having been
3 so marked for identifica-
4 tion, was introduced into
5 evidence.)

6 A Yes, this is the report that I prepared reflecting
7 the conditions I observed at the site on July 23rd, 1995.

8 Q And after-- Does that report fairly and
9 accurately represent the original report that you prepared
10 regarding your inspection of the site yesterday?

11 A Yes, it does.

12 Q Okay. In fact, that's a carbon copy?

13 A This is a carbon copy of the report, yes.

14 Q After inspecting the site yesterday and in
15 conjunction with the preparation of your report, did you
16 reach a conclusion as to whether any of the site had two
17 foot of suitable cover in accordance with the stipulation
18 and the agreement and the corresponding Court Orders of
19 1984?

20 A Yes, I did.

21 Q Okay, and what was that conclusion?

22 A I concluded that the facility was not in
23 compliance with the two-foot final cover requirement.

24 Q Okay.

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PRIVILEGE AND WORK-PRODUCT DOCTRINE.

(At this time, Plaintiff's
Exhibit No. 2, having been
offered into evidence, was
admitted, there being no
objection by Mr. Baker.)

MR. LaROSE: I would move for admission of
Plaintiff's Group Exhibit 3, which is the December 12th,
1979 inspection report and corresponding photographs of Mr.
McCarthy?

THE COURT: Any objection?

MR. BAKER: Objection I made earlier.

THE COURT: Overruled. Admitted.

(At this time, Plaintiff's
Exhibit No. 3, having been
offered into evidence, was
admitted over the objection
of Mr. Baker.)

MR. LaROSE: Okay, I offer Plaintiff's Group
Exhibit No. 4, which is the inspection report of July 29th,
1982 and corresponding photographs and probing results of
Mr. McCarthy.

MR. BAKER: Objection I made earlier.

THE COURT: Overruled. Admitted.

(At this time, Plaintiff's

HED 0000450

1 A Which area?

2 Q Well, you've testified to several areas, a lot of
3 it along the dividing line, as I understood it, between "A"
4 and "B."

5 A I would have to check the reports, but it's been
6 there over a year.

7 Q You know whence it came?

8 A No, I do not.

9 Q As a matter of fact, some of it's been there
10 since '82, hasn't it?

11 A That's possible.

12 Q Look at your Exhibit No. 4, if you would, please.
13 And I direct you to the third paragraph and the last
14 sentence therein. The northern portion of the northern
15 site consists of Pillsbury Company coal, coke and grain
16 operation plus their permitted demolition site?

17 A Yes.

18 Q Do they have a permit to dump demolition rubble?

19 A They did, yes.

20 Q They did?

21 A Yes. But not in Area "A," "B," or "C," north of
22 that in the fly-ash pond.

23 Q Did they dump this?

24 A Excuse me?

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MONSANTO INSURANCE COMPANY LITIGATION:

MAY 25, 1990 ORDER PROTECTED MATERIAL
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PROTECTED MATERIAL: MONSANTO
INSURANCE COVERAGE LITIGATION

1 Q Did they dump the demolition rubble that's there?

2 A In Area "A," I don't know who dumped the
3 demolition material there.

4 Q Was it dumped after-- Well, strike that.

5 Isn't it a fact that, at least, since January 1, 1974,
6 Sauget has not used the site?

7 A I don't know that for a fact.

8 Q Do you know when he quit using it?

9 A (no response)

10 Q All right, strike that.

11 He has quit using it, hasn't he, as a landfill?

12 A To the best of my knowledge, yes.

13 Q All right. But you don't remember when?

14 A No, not exactly.

15 Q Pat, does it help the flood was in '73?

16 A I remember the flood very well.

17 Q Because you were down there during the flood?

18 A Yes, I was.

19 Q And he ceased using it either before, during or
20 shortly after the flood, didn't he?

21 A The flood was in the spring of '73, March and
22 April. There was--

23 Q Well, at one time-- He had an argument about
24 whether he continued to dump or not during the flood,

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1 right?

2 A Yes.

3 Q Okay, but he quit after the flood, didn't he?
4 If he didn't quit during or before, he quit after the
5 flood?

6 A The best of my knowledge, he quit the majority of
7 his operation. I can't say one hundred percent.

8 Q Pat, did he put this construction rubble on any
9 part of the site that you know of or allow it to be put
10 there?

11 A Talking about that which I had testified to
12 earlier, I don't know if he put it there.

13 Q Would you-- You were here in the courtroom
14 earlier in the afternoon when he testified as to where the
15 site is and the surrounding areas, were you not?

16 A Yes.

17 Q Do you find any fault with his testimony as to
18 where it is?

19 A I was at a disadvantage, and then I was behind
20 the photograph at the time.

21 Q All right, let me run it through with you.
22 It is on the riverside of the levee?

23 A Correct.

24 Q It lies between a fly-ash pond on the north?

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1 mile and east of and parallel to the levee?

2 A Yes.

3 Q And there aren't any houses except on the east
4 side of Route 3, are there?

5 A In that vicinity, that's correct.

6 Q All right.

7 Have you ever tested the fly-ash that has been used as
8 cover on this site?

9 A I have not, no.

10 Q Okay. Have you really ever done a complete grid
11 system inspection of this site?

12 A No. As my reports show, it was a--

13 Q A couple of them, at least, were just in a
14 straight line north and south?

15 A (indicated yes)

16 Q But you never went like-- What do they call it?
17 Graph paper or true grit?

18 A This is correct.

19 Q All right.

20 Have you done anything about the demolition rubble
21 that's on the site?

22 A No.

23 Q Has your agency done anything about it?

24 A No. Other than this proceeding.

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MAY 25, 1990 ORDER PROTECTED MATERIAL
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1 Q All right, then in Plaintiff's Exhibit 7 you say,
2 "One load of construction and demolition material was
3 observed in the southern part of Area "B." A name was
4 obtained from several blank checks. A letter will be
5 written to that company."

6 A Yes.

7 Q Who is the prospective dumper?

8 A Within the load of construction and demolition
9 debris, I found business-style multiple checkstubs, and
10 there was a construction company from Cahokia with the name
11 on it.

12 Q Okay. Not Sauget and Company?

13 A No.

14 Q All right. So, your suspicion is that maybe, at
15 least, it emanated with something they have something to do
16 with?

17 A That's my suspicion, yes.

18 Q Whether they were the dumper or they were the--
19 What do you call it in the business?

20 A Generator.

21 Q Generator.

22 And you don't know whether some of the-- some of the
23 other construction rubble is some that Pillsbury brought in
24 and put where they were allowed to put it or not?

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1 A I don't know for a--

2 Q Fact?

3 A Fact who brought it.

4 Q Have you made any inspection of the other
5 construction rubble to determine any type of identity like
6 you did on the stuff you found yesterday?

7 A I-- Yes, in the sense that I looked at it. I
8 didn't see any papers or anything that would indicate a
9 name.

10 Q If Sauget testified he didn't put it there, would
11 you have any reason to doubt that?

12 MR. LaROSE: I'm going to object to that. It
13 calls for speculation.

14 MR. BAKER: Well, that was his testimony.

15 THE COURT: Overruled.

16 You may answer the question.

17 A I can't refute it. I can't doubt it.

18 Q Pat, would you-- would it be fair to state that
19 yesterday and this morning substantially all of "A" and "B"
20 and "C" were covered by vegetation?

21 A "C" for sure.

22 Q Well, let's exclude the Pillsbury part of "A" and
23 "B."

24 A Okay. Yes, if you exclude that, the majority of

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1 it would be covered by vegetation at this time.

2 Q And the cinders that are in place are pretty darn
3 well packed down, aren't they?

4 A Packed down?

5 Q Well, they support automobile traffic, heavy
6 truck traffic?

7 A There's several roads on the site, yes.

8 Q They're not concrete or a gravel, are they?
9 Aren't there cinders in place?

10 A Yes.

11 Q Okay. And aren't they reasonably well pervious?

12 THE COURT: Impervious?

13 Q (Mr. Baker) Wait a minute, impervious? Or have
14 you been there when there has been a recent rain?

15 A I can't-- They're a packed road. I can't--

16 Q Let me ask you the question this way: Pat, have
17 you ever seen one of those heavy trucks coming to and from
18 Pillsbury bogged down in one of the roads?

19 A No.

20 Q And have you been there long enough to give us an
21 estimate of maybe how many trucks Pillsbury has coming in
22 and going out during an hour?

23 A You're talking going out the north way?

24 G Yeah.

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1 A It would be purely speculative.

2 Q Would you say it's a rather-- it's more than
3 five an hour during the time they're working?

4 A At times I have been there, yes.

5 Q Much more than five?

6 A Yes, it's-- There is a lot of coal trucks going
7 out and grain trucks coming in.

8 Q Pat, could you tell us in your opinion how much
9 of it-- of "A" and "B" Pillsbury, in fact, is using?

10 A It varies.

11 Q Well, by season?

12 A I don't know if it's seasonal, but I know it
13 varies.

14 Q Well, they use it for coal, don't they?

15 A Yes.

16 Q And they use it for grain? Have you been there
17 when they've had grain piles?

18 A They did at one time, but I haven't seen any
19 grain there for quite sometime.

20 Q This morning or yesterday, how much would you say
21 they were using of "A" and "B"?

22 A I would say none of "B."

23 Q None of "B" this morning?

24 A That's correct. And I would say the northern

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1 third maybe of "A."

2 Q The northern third? If "A" is twenty acres,
3 you're saying they're using the northern seven?

4 A Well, of course, they're also using what is
5 labeled there as the fly-ash pit because that's filled in.

6 Q Did you say you think this picture was taken in
7 '80?

8 A I know it was taken in '80.

9 Q Do you remember-- Was it an I.D.O.I. picture?

10 A Yes.

11 Q That's where you guys got it, wasn't it?

12 A Correct.

13 Q And you remember when Pillsbury came in?

14 A Not really.

15 Q Pat, is the line between "A" and "B" identifiable
16 on the ground? It's not-- Let me ask the question this
17 way: It is not a natural line? It's not a ditch or a
18 mountain or a hill or anything like that, is it?

19 A That's correct.

20 Q It's a line that we agreed upon way back when,
21 and it's supposed to run off the high tension tower, isn't
22 it?

23 A There's one in that general location, yes.

24 Q That is the best we can do on it.

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1 MR. LaROSE: That's all I have.

2

3 THE COURT: Mr. Baker?

4 MR. BAKER: Nothing.

5 THE COURT: You may step down. Thank you.

6 (At this time, the witness was excused from the
7 witness stand.)

8

9 THE COURT: Call your next witness.

10 MR. LaROSE: Your Honor, before it gets out of
11 everybody's mind, I would like to reoffer Group Exhibits--

12 THE COURT: Let's start with one at a time.
13 Okay?

14 MR. LaROSE: Okay. The-- Where are we, 5?

15 THE COURT: 5. Start with 5.

16 MR. LaROSE: Group Exhibit No. 5 which is Mr.
17 McCarthy's inspection report dated 3-28-85 along with
18 corresponding photographs and diagrams showing the depth
19 probe samples.

20 MR. BAKER: It's not a limited offer, though, is
21 it?

22 THE COURT: A limited offer? No, I think you're
23 saying the entire exhibit, correct?

24 MR. LaROSE: Correct.

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1 MR. LaROSE: The People would call at this time
2 Mr. Delbert Haschemeyer.

3 THE COURT: Step forward, please.

4 Please raise your right hand to be sworn.

5

6

DELBERT HASCHEMEYER

7 being called as a witness by Mr. LaRose, and having been
8 first duly sworn, testified as follows:

9 THE COURT: Have a seat right there, please.

10 DIRECT EXAMINATION

11 BY MR. LaROSE:

12 Q Mr. Haschemeyer, could you state your full name
13 for the record, please?

14 A Delbert D. Haschemeyer.

15 Q Could you spell Haschemeyer for the Court
16 Reporter?

17 A H-A-S-C-H-E-M-E-Y-E-R.

18 Q Your present employment position, Mr.
19 Haschemeyer?

20 A Deputy Director with Illinois EPA.

21 Q Is that Deputy Director of the entire agency?

22 A That's correct.

23 Q Out of which office do you work?

24 A Director's Office.

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1 that the People have; and subject to reservation of
2 argument, the People would rest.

3 THE COURT: Okay, do you have any rebuttal, sir?

4 MR. BAKER: Just-- I have to make something
5 eminently clear.

6 Would you retake the stand, please (to his client).

7

8 PAUL SAUGET

9 being recalled to the witness stand by his attorney in
10 rebuttal, having been previously sworn, testified as
11 follows:

12 (REBUTTAL) DIRECT EXAMINATION

13 BY MR. BAKER:

14 Q You're the same Paul Sauget who testified
15 earlier?

16 A Yes, I am.

17 Q And I assume, Mr. Sauget, you realize you're
18 still under oath?

19 A I do.

20 Q I guess that admonition ought to be made by the
21 Court.

22 Mr. McCarthy talked about having observed construction
23 rubble on the site in, as I understand it, two different
24 places, one down near the-- at or near the line between

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1 "A" and "B" and another up apparently further north.
2 You're familiar with the site as it exists today, are you
3 not?
4 A I am.
5 Q Did you put or cause any of that construction
6 rubble to be put on that site?
7 A No, sir, I did not.
8 MR. BAKER: No other questions.
9
10 MR. LaROSE: I have nothing further.
11 THE COURT: You may step down.
12 (Witness excused from the witness stand at this
13 time.)
14
15 THE COURT: Do you rest on rebuttal?
16 MR. BAKER: I rest.
17 THE COURT: Very well. Closing arguments. The
18 State? Well, closing arguments, Mr. Baker has the burden
19 of proof, it's your opportunity to proceed.
20 Okay, as you will,--
21 MR. BAKER: Wait a minute, may I reopen my
22 rebuttal?
23 THE COURT: Sure.
24 MR. BAKER: I remembered something.

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